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COMMERCIAL REGISTRATION APPEAL TRIBUNAL

OVERVIEW AND SUMMARY OF DECISIONS

FOR THE YEAR 1992



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SEPTEMBER 1994

TRIBUNAL AND COURT DECISIONS - 1992OVERVIEW OF TRIBUNAL DECISIONS

In 1992, the Tribunal rendered decisions under the following statutes:

<u>Act</u>	<u>No. of Decisions</u>	<u>Favourable Dispositions</u>
Collection Agencies Act	2	
Funeral Directors and Establishments Act	3	
Mortgage Brokers Act	3	2
Motor Vehicle Dealers Act	18	2
Real Estate and Business Brokers Act	23	5
Travel Industry Act	5	4
Ontario New Home Warranties Plan Act	98	28
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TOTAL	152	41

Approximately forty percent of the cases heard by the Tribunal in 1992 dealt with the issue of whether an applicant's registration should be permitted to continue, and if so, on what terms, in the face of a Proposal by the Registrar to refuse registration.

A common issue arising in the registration cases, for example, those heard under statutes such as the Motor Vehicle Dealers Act or the Real Estate and Business Brokers Act, was the impact of an applicant's failure to disclose relevant past conduct to the Registrar (see for example the Bonnie Wilson decision, below).

Another issue in the registration cases was the effect of trust defalcations. For a discussion of some of these cases, see **APPEALS TO DIVISIONAL COURT**, below.

In addition to the registration cases, a large body of 1992 decisions dealt primarily with appeals by applicants who had been denied compensation or remedial work under the Ontario New Home Warranties Plan Act by the Ontario New Home Warranty Program.

Many of these compensation cases are fact-specific. However, of particular interest are decisions by the Tribunal respecting the nature of a "contract" and "agreement to sell" under the Act (see Julio Carvalho, below) and the Program's obligation respecting remedial work (see Metropolitan Toronto Condominium Corporation No. 813, below).

Also noteworthy is the Divisional Court decision of DeSoto Developments Limited, dated April 29, 1992, in which it was held that the Tribunal does not have the jurisdiction under the Ontario New Home Warranties Plan Act to require applicant builders to pay monies allegedly owing to the Program. According to Divisional Court, this liability must be determined by a civil court (in this regard, see the 1992 decisions of the Tribunal in Glenellen Homes Limited and 669585 Ontario Ltd.).

TRIBUNAL CASES

Registration and Failure to Disclose Relevant Past Conduct

In the Bonnie Wilson decision dated April 10, 1992, the Tribunal upheld the Registrar's Proposal to revoke the registration of the Applicant as a real estate salesperson under the Real Estate and Business Brokers Act. The Registrar's Proposal relied upon section 6(1)(b) of the Act that the past conduct of the Applicant afforded reasonable grounds for the Registrar to believe that the Applicant will not carry on business in accordance with law and with integrity and honesty.

The relevant past conduct of the Applicant, who had been registered under the Act since 1985, was her failure to disclose a criminal conviction in a renewal application. The Applicant had been convicted of assault on March 14, 1991, and failed to disclose this on her renewal application dated March 21, 1991.

The Tribunal found that the Applicant had demonstrated "clear and flagrant dishonesty" in failing to disclose this conviction to the Registrar in response to question 6 of the renewal application, which specifically requires such disclosure. The Tribunal reviewed the caselaw denying registration upon this basis and found it applicable here.

The Tribunal stated:

It must be remembered that the Ministry receives many thousands of these applications for registration and

renewal of registration every year and without a tremendous increase in facilities to deal with them and, therefore, in cost and red tape it would be completely impossible for the Ministry and for the Registrar and his office to function and deal with these applications without being able to rely fully upon the information set out on the face of each application....

Accordingly unless an Applicant has a real and accepted explanation that he or she honestly believed that the false information was, in fact, true at the time of its submission or unless the false information is of rather minor consequence, the Tribunal cannot overrule the Registrar.

In the Robert Harold Cook decision dated May 1, 1992, the Tribunal directed the Registrar to grant registration to the Applicant under the Motor Vehicle Dealers Act upon terms and conditions. The Tribunal noted favourably the Applicant's full disclosure of his past criminal record. This record included 5 drug charges, four of which resulted in convictions and 1 impaired driving conviction, the last of which took place about 2.5 years before his application for registration.

Other 1992 decisions by the Tribunal dealing with the failure to disclose relevant past conduct include, under the Motor Vehicle Dealers Act: Amigo Auto Sales and Eloy Salvador Campoverde, Richard Bortolussi, Robert Diamond and Lutfi Mustapha; and under the Real Estate and Business Brokers Act: Mohammad Abdollahi-Soufian, Tony Arabia, Vladimir Baotic, Richard Anthony Parker, Selvin Lloyd Fray, Gennady Rudy Isaakov and James Russell.

"Contract" or "Agreement to Sell" under the Ontario New Home Warranties Act

In the Julio Carvalho decision dated September 11, 1992, the Tribunal directed the Ontario New Home Warranty Program to refund \$6000 to the Applicants. This represented the Applicants' financial loss resulting from the vendor's failure to return a reservation fee paid by them for the anticipated purchase of a condominium.

The Tribunal, in interpreting the reservation agreement and its intent, noted that the document had been drafted by the builder. The Tribunal found that the intent of both parties under the reservation agreement was that the builder would eventually build and the Applicants would eventually become the buyers and owners of the condominium specified in the agreement. The fact that certain

conditions were attached to the transaction did not negate this intention.

In the view of the Tribunal, the transaction as a whole, beginning with the builder's advertisement inviting the public to purchase a condominium unit, and including the reservation agreement, constituted a contract to provide a home, under section 14(1)(a) of the Act. The Tribunal stated: "If the transaction between Mr. Carvalho and the builder, in its essence, was for the provision of a home, then it comes within the Ontario New Home Warranties Plan Act (See **APPEALS TO DIVISIONAL COURT**, below where this decision was reversed upon appeal.)

However, in the Eileen McGivern decision dated November 5, 1992, the Tribunal concluded that the Applicant was not entitled to a refund of monies paid under a reservation agreement for a condominium.

See also the cases of Jack and Libby Mandos and Martin Ramsaroop et al., where the Tribunal deals with the interpretation of the contract between the parties.

The Ontario New Home Warranty Program's Obligation to do Remedial Work

In the case of Metropolitan Toronto Condominium Corporation No. 813, dated January 8, 1993, the Tribunal upheld the decision the Ontario New Home Warranty Program to deny compensation in excess of \$200,000 to the Applicant. This amount represented the cost claimed by the Applicant to repair the garage deck topping that all parties agreed was defective.

However, the parties disagreed respecting the appropriate method of repair. The Program took the position that one repair method, which had been proposed and guaranteed by the builder, was acceptable. The Applicant preferred another method of repair.

The Applicant, according to the Tribunal, nevertheless proceeded to have "substantial and expensive repairs" completed, before the Program could perform a conciliation inspection.

The Tribunal found that there was no urgency to complete the repair nor was there any proof that the Program's accepted method of repair would have been unsatisfactory.

In the view of the Tribunal, the actions of the Applicant "prevented the Program from carrying on its duties under section 17

of the Act [to conciliate disputes] and section 5(3) of Regulation 726 [to order 'such remedial work, if any, as may be required to settle the dispute']. (See APPEALS TO DIVISIONAL COURT, below, where this decision was upheld upon appeal.)

Another issue respecting the Program's obligation to do remedial work was whether such work is subject to warranty if found to be defective. In the Rod Senior case, the Tribunal found it reasonable to apply the same warranties in the Act to repairs effected by the Program. See also the 1992 decisions of Edgar Cowie and Mr. and Mrs. D.M. Sosiak.

APPEALS TO DIVISIONAL COURT

The Divisional Court handed down seven decisions respecting the 1992 decisions by the Tribunal: one under the Mortgage Brokers Act, three under the Real Estate and Business Brokers Act, and three under the Ontario New Home Warranties Plan Act. The Tribunal's decision was upheld in three cases and overturned in four cases.

Refusal of Registration

In Vasiliou v. Homeland Funding Inc., the Divisional Court set aside the Tribunal's order, which had directed the Registrar to refrain from carrying out his Proposal to refuse the registration of the corporate Applicant under the Mortgage Brokers Act.

The Divisional Court found that the Tribunal had erred by failing to make findings of fact on evidence, that, if properly assessed, could only lead to refusal of registration. In the view of the Divisional Court, there existed ample evidence that the principal of the corporate Applicant, Mr. Handelman, had used his role as lawyer, mortgagee and developer to mislead investors and clients, who suffered substantial losses.

Similarly, in Registrar v. Griese, the Divisional Court set aside the Tribunal's order, which had permitted the Applicant's registration under the Real Estate and Business Brokers Act to continue upon terms and conditions.

The Divisional Court held that the Tribunal had fundamentally erred in failing to consider the cumulative effect of the Applicant's past misconduct, which included knowingly breaching trust requirements and other financial improprieties. The Tribunal further erred in giving more weight to the very scant evidence of the Applicant's recent reformation than to his consistent pattern of misconduct.

Finally, in Registrar v. Vogelsberg, the Divisional Court sent the matter back to the Tribunal for further consideration. The Tribunal in a decision dated January 6, 1992, had permitted the Applicant's registration under the Real Estate and Business Brokers Act to continue under terms and conditions.

One of the Tribunal's findings was that the Applicant, in making improper withdrawals from his trust account, did not commit an act of theft. The Tribunal noted that the transactions closed and no client suffered financial loss.

The Divisional Court held that the Tribunal had erred in finding that the Applicant did not commit a wrongful act in interfering with a trust account.

"Contract" or "Agreement to Sell"

In Carvalho v. Ontario New Home Warranty Program, the Divisional Court set aside the Tribunal's decision, discussed above.

The Divisional Court stated:

The Tribunal erred in thinking that it was sufficient that there merely be some kind of transaction for the provision of a home. The statute requires a very particular type of transaction; a contract to provide or an agreement to sell, not simply a reservation agreement or some other form of contingent option or other transaction. If protection is to be extended to a class of transaction not specified in the legislation that is a matter for the Legislative Assembly, not the court.

The Program's Obligation to do Remedial Work

In Metropolitan Toronto Condominium Corporation No. 813 v. 675550 Ontario Ltd. and Ontario New Home Warranty Program, the Divisional Court upheld the Tribunal's decision to deny compensation for repairs unilaterally performed by the Applicant, before the Program had full opportunity to conciliate and order remedial work.

The Divisional Court held that there was no legal error in the Tribunal's determination, finding that there was no "basis on which to characterize the owner's actions as reasonable in the circumstances".

PUBLICATION OF 1992 CRAT DECISIONS

COLLECTION AGENCIES ACT

CONVILLE, CHARLES - COLLECTION AGENCIES ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - Bankruptcy alone would not disentitle Applicant to registration as a collector under the Act - However, Applicant as directing mind of the corporation had positive obligation to ascertain status of trust accounts - He misused trust funds for general operation of the company and may have put public at risk - Registrar was acting reasonably and protecting the public in refusing Applicant's registration, (1992) 23 CRAT 1.

EQUIFAX/COLLECTCORP INC. - COLLECTION AGENCIES ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - Sec. 11(1) (a) and 11(5) of the Act interpreted, with subsec. (5) applying to every other part of section 11, including subsec. (1) - Canada/U.S. Free Trade Agreement does not bar enforcement of relevant sections of Act - Trust not a sham or void for uncertainty - However, trust allows non-resident shareholders to hold more than 25% of equity shares of corporation, contrary to sec.11(1)(a) of Act, (1992) 23 CRAT 4.

FUNERAL DIRECTORS AND ESTABLISHMENTS ACT

ANISMAN, PHILIP ET AL. - FUNERAL DIRECTORS AND ESTABLISHMENTS ACT - UPHELD: DECISION OF COMPLAINTS COMMITTEE OF THE BOARD OF FUNERAL SERVICES - Complaints Committee acted reasonably in response to Applicant's complaint about the representations made and fees charged by a funeral establishment - Decision was reasonable, wherein the Complaints Committee admonished funeral establishment for failure to offer pricelists to all clients prior to entering into any contract for the provision of funeral services, in accordance with the Act; further, it was reasonable for the Complaints Committee to refrain from referring rest of matter to Discipline Committee for a hearing - Fees charged were not so excessive as to constitute professional misconduct under the Act, (1992) 23 CRAT 13.

McKELVEY FUNERAL HOME - FUNERAL DIRECTORS AND ESTABLISHMENTS ACT - CONSENT ORDER - Upon consent of the Applicant and upon hearing counsel for the Registrar of the Board of Funeral Services, the Tribunal ordered that the Registrar's Proposal to revoke the Applicant's registration be carried out, (1992) 23 CRAT 332.

SCOTT FUNERAL HOMES (VAUGHAN CHAPEL) - FUNERAL DIRECTORS AND ESTABLISHMENTS ACT - DENIED: APPLICANT'S MOTION TO PROHIBIT THE CALLING OF CERTAIN WITNESSES - The Tribunal held that the Registrar can be called as a witness in these proceedings because the Registrar acts in an administrative capacity not a judicial one. Furthermore, because section 22(7) of the Act designates the Registrar as a party to these proceedings, the Tribunal found that if a person can be summoned to give evidence, it follows that a person may voluntarily give evidence. In the absence of evidence that the Chairman of the Board of Funeral Services exercises a judicial function, the Chairman is also a competent witness before this Tribunal, (1992) 23 CRAT 333.

MORTGAGE BROKERS ACT

BLAKE, MURRAY VICTOR - MORTGAGE BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal, citing Brenner, concluded that the Registrar was not in error to refuse registration under section 5(1)(a) and (b). Particularly relevant was the involvement of the Applicant, as president of Can Corp Financial Services, a mortgage broker, in the conduct of its business and the circumstances of its bankruptcy in 1991. The Applicant's wrongful conduct included treating investor funds more as a deposit to meet the corporation's cash flow requirements than a trust, resulting in heavy losses for investors, (1992) 23 CRAT 21.

HOMELAND FUNDING INC. - MORTGAGE BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION - The Tribunal found that the Registrar had failed to prove allegations of wrongful conduct by Arnold S. Handelsman, president and sole director of Homeland, who was simply a developer whose projects had failed. Handelsman's disbarment and personal bankruptcy were admitted but insufficient to support refusal to register the corporate Applicant under section 5(1)(c)(ii) and (d) of the Act. (1992) 23 C.R.A.T 51. (See below Vasiliou et al where this decision was reversed upon appeal to Divisional Court)

VASILIOU ET AL. v. HOMELAND FUNDING INC. - Decision by Divisional Court, February 11, 1994 - Appeal allowed from decision by the Tribunal dated October 5, 1992. Tribunal's order set aside and the Registrar directed to carry out its proposal - Tribunal erred by failing to make findings of fact on evidence that, if properly assessed, could only lead to refusal of registration - Ample evidence existed that Handelsman used his role as lawyer, mortgagee and developer to mislead investors and clients, who suffered substantial losses.

MACDONALD, LYNN - MORTGAGE BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION WHICH IS TO BE PERMITTED UPON TERMS AND CONDITIONS - Applicant refused registration because of past conduct of Applicant's husband as a mortgage broker, whose registration was revoked following a conviction for fraud, and the fact that the Applicant intended to operate her business from the marital premises. Registrar's concerns respecting the husband's role justified. However, the Applicant should be given an opportunity to be registered, upon terms and conditions that prohibit any involvement by the husband in the business, which cannot be conducted at the marital premises, and which must be performed in association with another mortgage broker for 2 years following registration, (1992) 23 CRAT 92.

MOTOR VEHICLE DEALERS ACT

AMIGOS AUTO SALES LTD. AND ELOY SALVADOR CAMPOVERDE - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the nature of the criminal offenses, which involved fraudulent conduct in the auto trade business, and the Applicant's failure to disclose these offenses and a lengthy driving offense record, constituted relevant past conduct under section 5. In meeting his duty to protect the public, the Registrar has to rely on documentation as completed, (1992) 23 CRAT 100.

BORTOLUSSI, RICHARD - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Registrar had reasonable grounds to refuse registration upon the basis that the Applicant failed to disclose numerous criminal and driving offenses on his application form and attempted thereafter to mislead. Given the six intervening years since the criminal offenses, the application might have been regarded favourably if the Applicant had made full disclosure of all relevant past conduct, (1992) 23 CRAT 103.

JASWANT SINGH BRAR O/A MAPLE AUTO SALES & SERVICES - MOTOR VEHICLE DEALERS ACT - CONSENT ORDER - Upon agreement between the parties, the Tribunal ordered that the Applicant's registration be suspended for 3 months, at which time the Applicant must be in compliance with the Act or his registration will be revoked. The Applicant must erect a proper sign, maintain an office separate from his home and a garage register, and include specified information in all contracts, (1992) 23 CRAT 110.

JODNO LIMITED (WABASH AUTO SALES) - MOTOR VEHICLE DEALERS ACT - CONSENT ORDER - Upon agreement between the parties, the Tribunal ordered the Registrar to suspend the Applicant for 30 days, during which the Applicant will do what is necessary to bring itself in compliance with the Act, after which the Registrar will make an inspection. In the absence of such compliance, the Registrar will carry out his Proposal to revoke the registration of the Applicant, (1992) 23 CRAT 338.

COOK, ROBERT HAROLD - MOTOR VEHICLE DEALERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UPON TERMS AND CONDITIONS - The Tribunal followed the principles set out in the decision of Gary M. Gordon (1989) 18 CRAT 289. The Tribunal emphasized that full disclosure of past criminal convictions had been made on the application form by the Applicant, who had strong support for the future. Registration should be granted under appropriate supervision, (1992) 23 CRAT 112.

DIAMOND, ROBERT - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the Applicant had failed to make proper disclosure of numerous convictions. The Tribunal stated that "there are many authorities by way of judgments of the Tribunal holding that failure to make proper disclosure in answer to the question about criminal convictions and charges pending [is] past conduct on the part of an Applicant upon which the Registrar is entitled to base a belief that he will not carry on business in accordance with law and with integrity and honesty", (1992) 23 CRAT 115.

596729 ONTARIO INC. (F.M. CONNORS AUTO SALES) - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - No one appearing for the Applicant, the Tribunal heard the evidence of the Registrar that the Applicant breached section 13(3) of Regulation 665 of the Act by failing to maintain dealership premises approved by the Registrar, with a proper sign clearly identifying the dealer's registered name. Registration should be revoked in view of the Applicant's breach of the Act, which mandates certain premises and sign in order to distinguish between private and public sellers of vehicles and thus protect consumers, (1992) 23 CRAT 122.

FARDIN AYATI GHAFFARI O/A ARIANA - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - No one appearing for the Applicant, the Tribunal concurred that the Applicant had breached the Act, and thus should be refused registration, by failing to maintain dealership premises approved by the Registrar, with a proper sign clearly identifying the dealer's registered name, (1992) 23 CRAT 124.

ZAID HOSSAIN O/A S. H. MOTORS - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - No one appearing for the Applicant, the Tribunal found that the Registrar had reasonable grounds for revocation upon the basis that the Applicant maintained no approved premises, no stock of motor vehicles and no proper sign, all of which rendered the Applicant in breach of the Act, (1992) 23 CRAT 126.

LAVERY, DONALD D. - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar's Proposal, based upon the Applicant's financial irresponsibility and relevant past conduct under section 5. The Applicant was involved in his third personal bankruptcy, had been convicted of fraud in the motor vehicle business and had failed to disclose the details of his history. As well, the Tribunal agreed that the Applicant breached section 3 by acting as a salesman while unregistered, (1992) 23 C.R.A.R. 128.

MAHMASSANI, MOHAMAD S. - MOTOR VEHICLES DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO SUSPEND REGISTRATION FOR ONE YEAR - The Tribunal, citing Brenner, found that the Registrar did not err in proposing the suspension, given the Applicant's 3 convictions in 1991 for fraudulent sales practices in the motor vehicle business. The Registrar properly considered the nature of the charges, the severity of the sentence, the Applicant's conduct during the intervening time, and the fact that he was not a directing mind in the events, (1991) 23 CRAT 134.

MUSTAPHA, LUTFI - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO SUSPEND REGISTRATION FOR TWO YEARS - The Tribunal, citing Brenner, found that the Registrar did not err in proposing the suspension, given the Applicant's 2 convictions in 1991 for fraudulent sales practices in the motor vehicle business, an additional conviction for theft in 1981, and his failure to disclose these convictions to the Registrar. Despite mitigating circumstances, the Applicant's failure to disclose provided reason for the suspension, as a matter of consumer protection, (1992) 23 CRAT 138.

PARKER, BERTHA - MOTOR VEHICLE DEALERS ACT - UPHELD: DECISION OF THE BOARD OF TRUSTEES OF THE MOTOR VEHICLE DEALERS' COMPENSATION FUND TO DENY COMPENSATION - The Tribunal interpreted section 1(c) of the Schedule in section 21 of Regulation 665, which defines "claim", as meaning only a claim arising out of some breach of the specific transaction involving the purchase or sale of a motor vehicle. Here there no evidence of a breach of either an oral or written agreement to repair a stalling problem with the car. Thus, compensation was payable only in the amount for outstanding repairs specified in writing at the time of the sales transaction, (1992) 23 CRAT 145.

PRIMO HOLDINGS LIMITED O/A CAR CITY SALES - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the Applicant was in breach of the Act by selling motor vehicles from his home, and thus should be refused registration. Noted were the Registrar's efforts to eliminate such "curb side sellers" so that all motor vehicle dealers, except bona fide private sellers, are properly registered and operating under this consumer protection legislation, (1992) 23 CRAT 148.

SPANOPULOS, ALEXANDER - MOTOR VEHICLE DEALERS ACT - DENIED: APPLICANT'S REQUEST FOR AN ADJOURNMENT - The Tribunal agreed that the primary objective of the Act is consumer protection and that the public interest requires that the Registrar be permitted to have Proposals heard before the Tribunal reasonably expeditiously. The Tribunal further agreed that postponing a case sine die is an exception that should be granted for only the most compelling reasons. The Tribunal noted that the Applicant had ample notice of the hearing. Furthermore, the Tribunal found that the Registrar had not undertaken to delay the hearing until the appeal of the Applicant's conviction was heard. Even if such undertaking had been given, the Registrar was entitled to change his mind if his duty to administer the Act required him to do so, (1992) 23 CRAT 340.

SPANOPULOS, ALEXANDER - MOTOR VEHICLE DEALERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO SUSPEND REGISTRATION FOR ONE YEAR - The Tribunal concurred with the Registrar, given the Applicant's conviction in 1991 for fraudulent sales practices in the motor vehicle business, coupled with the Applicant's unwillingness to accept responsibility for his conduct. The Tribunal found the same reasoning to apply as that found in previous decisions, which upheld the Registrar's proposal to suspend under similar circumstances, (1992) 23 CRAT 151.

TOYE, HUGH MERVIN - MOTOR VEHICLE DEALERS ACT - CONSENT ORDER - Upon the consent of the parties, the Tribunal ordered continued registration as a salesperson only, subject to terms and conditions, (1992) 23 CRAT 159.

WENTWORTH, JAMES AND KOEBEL, MARGARET - MOTOR VEHICLE DEALERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UNDER TERMS AND CONDITIONS - At the outset of the hearing, the Registrar withdrew his Proposal against Margaret Koebel. The other Applicant was found by the Tribunal to have breached the Act in failing to keep business records on the premises, having a proper sign, including the address on his business card, and engaging in one retail sale while registered as wholesale dealer. The Tribunal distinguished Brenner, which involved considerable discretion by the Registrar, to this case which required the determination of facts as to specific breaches of statutory obligations. Given the Applicant's mitigating circumstances, registration should continue under terms and conditions, (1992) 23 CRAT 160.

REAL ESTATE AND BUSINESS BROKERS ACT

STANLEY HALL v. THE REGISTRAR OF REAL ESTATE AND BUSINESS BROKERS, Decision by Divisional Court, March 22, 1993 - Appeal dismissed from a decision by the Tribunal dated June 12, 1991, with costs.

THE REGISTRAR OF REAL ESTATE AND BUSINESS BROKERS v. T.P.C. MAYAN, Notice of Abandonment of Appeal, August 4, 1992, from a decision by the Tribunal dated July 29, 1991.

KEMPER, FRIEDHELM AND DAVID MORPHY - REAL ESTATE AND BUSINESS BROKERS ACT - CONSENT ORDER - The Tribunal ordered that the Applicants be allowed to file new applications for registration by a specified date, for response by the Registrar by specified date, and that the matter to be adjourned to the next available date. (1992) 23 CRAT 366.

KEMPER, FRIEDHELM AND DAVID MORPHY - REAL ESTATE AND BUSINESS BROKERS ACT - MOTION BY APPLICANTS DENIED - The Tribunal found that the parties had consented to amendment of the Consent Order, above. Furthermore, the Tribunal found that the Registrar had not abandoned his Proposal because the Registrar could not be held solely responsible for expediting the hearing. (1992) 23 CRAT 367.

KUBAN, STEPHEN - REAL ESTATE AND BUSINESS BROKERS ACT - MOTION BY APPLICANT DENIED - The Tribunal denied the Applicant's motion to have the Registrar directed to refrain from carrying out his Proposal to refuse registration, without conducting a hearing, (1992) 23 CRAT 371.

RE/MAX SUPREME REALTY LTD. AND LEO LATINI AND STEPHEN KUBAN - REAL ESTATE AND BUSINESS BROKERS ACT - RULING RESPECTING VOIR DIRE - The Tribunal held that where records are voluntarily provided to investigators or inspectors, the contents of the records, on satisfactory proof of their authenticity, are properly admissible in evidence before the Tribunal. However, section 15(2)(a) mandates that the investigator produce his appointment before conducting a search of the business premises. Failure to do so violated the section 8 Charter rights of the Applicant and the evidence so obtained was excluded under section 24(2) of the Charter, (1992) 23 CRAT 375.

RIPANI, LLOYD - REAL ESTATE AND BUSINESS BROKERS ACT - MAJORITY DECISION ALLOWING REGISTRAR'S MOTION - The majority allowed the motion of the Registrar to revoke the registration of the Applicant upon the basis that the Applicant admitted breaching the terms and conditions by failing to report convictions under the Ontario Residential Rent Regulation Act. Further, the Tribunal viewed seriously the Applicant's breach of an undertaking to the Provincial Offences Court respecting restitution upon conviction, (1992) 23 CRAT 381.

RIPANI, LLOYD - REAL ESTATE AND BUSINESS BROKERS ACT - DISSENTING DECISION - The dissenting member stated that it would have been preferable for the Tribunal to have heard the case on the merits and reserve judgment on the Registrar's motion to refuse registration, (1992) 23 CRAT 384.

ABDOLLAHI-SOUFIAN, MOHAMMAD - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal, citing Brenner, found the Registrar was not wrong in his decision to refuse registration because the Applicant failed to disclose a criminal conviction on the application form. The failure to disclose to the Registrar constituted past conduct that was relevant to integrity and honesty, not the criminal offence itself, which was minor, (1992) 23 CRAT 171.

ARABIA, TONY - REAL ESTATE AND BUSINESS BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UPON TERMS AND CONDITIONS - The Tribunal found the Registrar erred in seeking revocation of the Applicant's registration, which was too severe a penalty under the circumstances. However, the Applicant must be penalized for failure to disclose two convictions, including one for assault causing bodily harm, and for failure to comply with the Toronto Real Estate Board's by-laws, for which he was fined \$1000. The continued registration of the Applicant was ordered subject to a 6-month suspension and the payment of all court-ordered fines and restitution, (1992) 23 CRAT 176.

BAOTIC, VLADIMIR - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal found that mere passage of time was insufficient to satisfy section 10. Here and at a previous hearing in 1987, the Applicant demonstrated the same lack of comprehension of the law under which the real estate industry is conducted. The nature and circumstances of the Applicant's convictions, his failure to disclose them when required, and his current finances constituted reasonable grounds under section 6 for the Registrar's refusal to register, (1992) 23 CRAT 193.

VLADIMIR BAOTIC v. THE COMMERCIAL REGISTRATION APPEAL TRIBUNAL AND MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS - Decision by Divisional Court, January 12, 1994 - Appeal dismissed from a decision by the Tribunal dated July 8, 1992.

FISHER, RICHARD ANTHONY - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Applicant did not dispute facts of criminal convictions involving narcotics in 1977, 1982 and 1990, nor his failure to properly disclose the convictions to the Registrar on applications in 1979, 1983 and 1989. Caselaw supports Registrar in refusing to register an Applicant while still on parole, as is the case here, (1992) 23 CRAT 200.

FRAY, SELVIN LLOYD - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Applicant failed to appear although duly served. Registrar's evidence accepted that Applicant failed to disclose convictions under the Criminal Code and the Liquor Licence Act of Ontario, despite being given an opportunity to do so. Registrar's duty is to protect the public and he must be able to rely upon full disclosure by applicants, (1992) 23 CRAT 204.

GRIESE, DONALD HUBERT - REAL ESTATE AND BUSINESS BROKERS ACT - CONSENT ORDER: DIRECTION OF THE DIRECTOR OF THE CONSUMER PROTECTION DIVISION TO BE CANCELLED - Applicant's bank had been directed to hold all funds on deposit to Applicant's credit for protection of another party - Evidence led that Ontario Court (General Division) action commenced between party and Applicant - Agreement reached wherein all such monies to be paid into court and Director's Direction to be cancelled to permit such payment, (1992) 23 CRAT 11.

GRIESE, DONALD HUBERT - REAL ESTATE AND BUSINESS BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UPON TERMS AND CONDITIONS - The Tribunal found that each ground relied upon by the Registrar, in itself, was insufficient evidence of relevant past conduct under section 6. These grounds included the Applicant's 6 convictions of knowingly contravening that Act by converting trust monies to an unauthorized use and by failing to maintain proper trust accounting, as well as deposit disputes respecting 3 transactions. The Tribunal directed the Registrar to register the Applicant as a salesman only under terms and conditions, (1992) 23 CRAT 206.

REGISTRAR v. GRIESE - Decision by Divisional Court, May 27, 1993 - Appeal allowed from a decision of the Tribunal dated April 3, 1992, with the Tribunal's order set aside and the Registrar directed to carry out proposal to refuse registration - The Tribunal erred fundamentally in failing to consider the cumulative effect of the Applicant's past misconduct - The Tribunal further erred in giving more weight to the very scant evidence of the Applicant's recent reformation than to his consistent pattern of misconduct - This included knowingly breaching trust requirements, and exhibiting financial impropriety and other business irresponsibility.

HILT, JAMES BRIAN - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal, citing Brenner, found the Registrar did not err in reasonably believing that the Applicant's conviction for fraud in 1991 constituted relevant past conduct under section 6. The question of how much time must elapse before an applicant can successfully claim a material change of circumstances under section 10 must be determined upon the merits of each case. Here the Tribunal was of the view that the Applicant should be allowed registration if he applies after maintaining an exemplary record of conduct for at least another year and substantially reduces the amount of restitution owing, (1992) 23 CRAT 213.

ISAAKOV, GENNADY RUDY - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal, citing Brenner, found the Registrar did not err in deciding that the Applicant's two criminal convictions in 1985 and 1987, and his failure to disclose, were reasonable grounds for refusing registration. The Applicant had not yet demonstrated a long course of trustworthy conduct; however, after obtaining a pardon, a new application would likely be regarded favourably by the Registrar. (1992) 23 CRAT 218.

MINER, RONALD RUSSELL - REAL ESTATE AND BUSINESS BROKERS ACT - CONSENT ORDER - Upon the Registrar abandoning his Proposal to refuse registration, with the consent of both parties, the matter was disposed of without a full hearing, (1992) CRAT 223.

RAMOTAR, SHANTA - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the Applicant cannot reasonably be expected to be financially responsible in the conduct of her business, as required under section 6, given the nature and extent of her debts. With outstanding judgments against her of over \$2 million, which were incurred in the real estate market, the Applicant had filed for bankruptcy a few days before the hearing. (1992) 23 CRAT 224.

RE/MAX DYNAMIC REALTY INC. AND JOSEPH H. VOGELSBERG - REAL ESTATE AND BUSINESS BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UPON TERMS AND CONDITIONS - The Tribunal regarded the penalty of revocation too severe for this Applicant, who depends entirely upon real estate for his livelihood, and who has conducted himself without complaint for two years. The Applicant, in making improper withdrawals from his trust account, did not commit an act of theft; the transactions closed and no client suffered loss. A more appropriate penalty was 3 months suspension and appropriate supervision, (1992) 23 CRAT 229.

THE REGISTRAR OF REAL ESTATE AND BUSINESS BROKERS and JOSEPH H. VOGELSBERG, Decision by Divisional Court, October 29, 1993 - Appeal allowed from a decision by the Tribunal dated January 6, 1992, with the matter sent back to the Tribunal for further consideration - The Tribunal erred in failing to make a finding as to whether the impugned activities contravened the Act, and whether the Applicant's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law, integrity and honesty. The Tribunal further erred in finding that the Applicant did not commit a wrongful act in interfering with a trust account.

RUSSELL, JAMES - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - No one appearing for the Applicant, the Tribunal heard the evidence of the Registrar. The Tribunal concurred with the Registrar that the Applicant's past conduct as evidenced by numerous convictions, many of which were alcohol-related and spanned a period from 1980 until as recently as 1987, and the Applicant's failure to disclose these convictions, precluded him from registration, (1992) 23 CRAT 234.

SINGH, DHARMJEET - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Applicant did not dispute the facts that contrary to section 31, he failed to disclose to the vendors his purchase of their home, and that he obtained two mortgages to cover the full purchase price. The Tribunal found that the Applicant was at least a willing participant in a scheme to inflate the value of the property to obtain mortgage financing in excess of the usual mortgage lending limit. Thus, the Registrar was correct in refusing registration under section 6(1)(a) and (b), (1992) 23 CRAT 242.

WAY, DARCY THOMAS - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the Applicant failed to disclose numerous convictions spanning 13 years, the pattern of which showed a disrespect for the law. The Tribunal further agreed that the Registrar's concerns respecting the past conduct of the Applicant were justified, given the serious nature of the crimes, which included theft and crimes causing substantial risk of physical harm to the public, for example, impaired driving. The past conduct and not the present intent of the Applicant must be considered, (1991) 23 CRAT 248.

WEIR, NICHOLAS - REAL ESTATE AND BUSINESS BROKERS ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION, WHICH IS TO BE PERMITTED UNDER TERMS AND CONDITIONS - The Tribunal regarded the Applicant as one who, although having transgressed, did not pose a threat to the public in the conducting of the business that was his livelihood. Although the Registrar was properly concerned about the Applicant's failure to disclose an outstanding charge and the nature of the other conviction, which involved fraud, the Tribunal found the Applicant to be credible and of good character. The Applicant should be registered under proper supervision, (1992) 23 CRAT 257.

WILSON, BONNIE - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal concurred with the Registrar that the Applicant was not candid in failing to disclose a conviction for assault on her application form. The Tribunal stated that "unless an Applicant has a real and accepted explanation that he or she honestly believed that the false information was, in fact, true at the time of its submission or unless the false information is of rather minor consequence, the Tribunal cannot overrule the Registrar". (1991) 23 CRAT 260.

WILSON, WESLEY WALKER - REAL ESTATE AND BUSINESS BROKERS ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal, citing Brenner, found that the Registrar did not err in refusing registration on the basis of relevant past conduct under section 6. The Applicant committed a serious breach of trust through the withdrawal of over \$150,000 in trust monies in 1990, putting consumers at risk. Caselaw supported the Registrar's view that the public interest weighs heavily in cases involving defalcations in trust funds, (1992) 23 CRAT 271.

TRAVEL INDUSTRY ACT

BAZAN, MIGUEL - TRAVEL INDUSTRY ACT - UPHELD: DECISION OF THE BOARD OF TRUSTEES OF THE TRAVEL INDUSTRY COMPENSATION FUND TO DENY COMPENSATION - The Tribunal found, upon "overwhelming" evidence, that the Applicant loaned \$20,000 to the travel agent and then conspired with the agent to attempt to recover that amount as compensation from the Fund. The Tribunal concluded that the Applicant was not a client under the Act and thus not entitled to compensation, (1992) 23 CRAT 288.

HAU, ARMIN - TRAVEL INDUSTRY ACT - BOARD OF TRUSTEES OF THE TRAVEL INDUSTRY COMPENSATION FUND DIRECTED TO PAY COMPENSATION - The Tribunal found that travel insurance and airport departure taxes were compensable as "travel services", as defined under the Act. This is in contrast to earlier caselaw in which the Tribunal held that both should be excluded under "travel services". In including airport departure taxes, the Tribunal noted that these taxes can be substantial and if not paid, the traveller does not travel, (1992) 23 CRAT 294.

889362 ONTARIO LIMITED (SUN HOLIDAYS) - TRAVEL INDUSTRY ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REFUSE REGISTRATION - The Tribunal found that the Registrar had failed to establish sufficient grounds for revocation, on the alleged basis that the Applicant was financially irresponsible and that the conduct of its officers or directors demonstrated a lack of honesty and integrity and a disregard for the law. The Tribunal agreed with the Registrar that the Applicant had contravened the Act; however, the suspension of the Applicant's registration since July 1990 was sufficient penalty, (1992) 23 CRAT 301.

SVEDOVA, HELENA AND RENATA NEJEZCHLEBOVA - TRAVEL INDUSTRY ACT - BOARD OF TRUSTEES OF THE TRAVEL INDUSTRY COMPENSATION FUND DIRECTED TO PAY COMPENSATION - The Tribunal found that the claimants made payment to an agent, who in turn purchased the travel services from a participant in the Fund. Thus, they were not disqualified on the basis of an alleged payment to a non-participant, (1992) 23 CRAT 317.

MCHUGH, LISA - TRAVEL INDUSTRY ACT - BOARD OF TRUSTEES OF THE TRAVEL INDUSTRY COMPENSATION FUND DIRECTED TO PAY COMPENSATION
 - For the reasons stated in the decision of Helena Svedova and Renata Nejezchlebova, above, based upon the similarity of facts, the Tribunal set aside the decision of the Board of Trustees, directing it to pay compensation, (1992) 23 CRAT 300.

ONTARIO NEW HOME WARRANTIES PLAN ACT

RICHMOND SQUARE DEVELOPMENT CORPORATION v. COMMERCIAL REGISTRATION APPEAL TRIBUNAL, ONTARIO NEW HOME WARRANTY PROGRAM ET AL., Supreme Court of Canada, November 5, 1992, leave to appeal dismissed with costs.

AJANDI, IMRE AND IREN - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal disallowed the Applicants' claim and upheld the decision of the Ontario New Home Warranty Program, (1992) 24 CRAT 392.

ALBINI, GORDON AND LORETO cob as GORDON CONSTRUCTION - ONTARIO NEW WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the Registrar carry out his Proposal to revoke the registration of the Applicant builder, if the Applicant has failed to pay to the Program the amount of \$3500 within the month, (1992) 23 CRAT 348.

ALLENDE, ENRIQUE, AND FRANCISCO ALVAREZ, NICOLA RIZZI, ALDO SGRO - ONTARIO NEW HOME WARRANTIES PLAN ACT - GRANTED: ADJOURNMENT ON BEHALF OF THE APPLICANTS - No one appearing for the Applicants, the matter was adjourned peremptorily against the Applicants to a date to be fixed by the Registrar, (1992) 23 CRAT 349.

PAUL BLACK CONSTRUCTION LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the Registrar carry out his Proposal to revoke the registration of the Applicant, if the Applicant failed to pay the Program \$10,000 for breaches of warranty by a specified date, (1992) 23 CRAT 350.

DEWHURST BROS. CONSTRUCTION (BOBCAYGEON) LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the Registrar carry out his Proposal to revoke the registration of the Applicant, if the Applicant failed to pay to the Program the amount of \$2900 in full settlement by a specified date, (1992) 23 CRAT 351.

ELLIOTT, VERONICA LYNN AND JOHN DOUGLAS - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPLICATION DISMISSED WITHOUT PREJUDICE TO APPLICANTS - The Tribunal viewed the Applicants' application for damages against the Ontario New Home Warranty Program to be premature, considering that proceedings were continuing in another forum, the Supreme Court, between the Applicants and the builder. The Tribunal agreed that it was undesirable to have proceedings in two forums at the same time which may lead to diverse decisions, (1992) 23 CRAT 352.

LUKA'S CUSTOM HOMES INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the hearing be adjourned peremptorily against the Applicant, to a date to be fixed by the Registrar, with additional parties joined, (1992) 23 CRAT 355.

MAYFIELD HEIGHTS LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - TERMS AND CONDITIONS IMPOSED, IN DEFAULT OF WHICH, REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION - The Tribunal ordered the Applicant to post a Letter of Credit and pay enrollment fees by a specified date; if the Applicant defaulted, there was no further right to a hearing before the Tribunal and the Registrar was entitled to carry out his Proposal to refuse to renew the Applicant's registration. (1992) 23 CRAT 356.

688092 ONTARIO LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the hearing be adjourned sine die upon condition that the Applicant builder pay certain amounts of monies owing to the Program by specified dates, (1992) 23 CRAT 358.

688092 ONTARIO LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - Upon receipt of confirmation from the Program that the Applicant builder had failed to comply with conditions for continued registration contained in Consent Order, above, the Tribunal ordered that the Registrar carry out his Proposal to revoke the registration of the Applicant forthwith, (1992) 23 CRAT 357.

URBANETICS LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - RULING RESPECTING ADMISSIBILITY OF EVIDENCE - The Tribunal ordered that a specific document, as tendered by the Program, was inadmissible on 2 grounds: if tendered to prove the facts, it was hearsay evidence; and if tendered as expert evidence, the witness had not been qualified as an expert witness, (1992) 23 CRAT 360.

WELLINGTON CONDOMINIUM CORPORATION NO.48 - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - Upon agreement between the parties, the Tribunal ordered the Program to disallow the claims of the Applicant, (1992) 23 CRAT 363.

YORK CONDOMINIUM CORPORATION NO. 530 - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPLICANT'S REQUEST FOR AN ADJOURNMENT GRANTED - The Tribunal adjourned the matter on a peremptory basis to a specified date, upon condition that all documentary evidence of the Applicant be served by a specified date, (1992) 23 CRAT 364.

ALMONTE, NICK - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Applicant claimed compensation for the absence of a sunken living room and foyer in his home. The Tribunal found the claim failed on several grounds under the Act: 1) the builder had not breached the contract; 2) even if the contract had been breached, no damages have been proven; and 3) there existed no breach of warranty, no major structural defect and no financial loss. Despite the Program's initial finding that a compensable breach of contract may have existed, the Tribunal can only give effect to claims covered by the Act, (1992) 24 CRAT 393.

ANPROP INVESTMENTS INC. (now registered as RIVER OAKS DEVELOPMENTS INC.) AND THE GREENHOUSES OF BRAMPTON I INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION IF PROGRAM NOT REIMBURSED - The Tribunal found that the Applicants, as builder, supplied defective tile to the homeowner; thus the Program was justified in ordering its replacement and seeking reimbursement from the Applicants. Registration was to be revoked if the Program was not reimbursed within 10 days, (1992) 24 CRAT 397.

BALLAM, BONNIE AND BILL BILECKI - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - The Tribunal found that both vendors and purchasers accepted that the water at the home was not potable at the date of possession. Because potability was subject to warranty, the purchasers should be reimbursed for the reasonable costs incurred to remedy the defect. In the view of the Tribunal, potability is more than the favourable result of a bacterial test, (1992) 24 CRAT 403.

BERARDO, MR. AND MRS. TONY - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found the owners' evidence, including a video, was not sufficiently persuasive to support their claims for breaches of the first-year warranty. The Tribunal stated that videos carefully prepared, without editorial comment and made available to opposing parties should generally be admitted into evidence. The Applicants' claims were thus disallowed, excepting minor repairs agreed to by the builder at the hearing. (1992) 24 CRAT 416.

BILOBRK, LOUIE AND LIZ - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - Of the owners' 12 first-year warranty claims, repairs of which totalled about \$7500, the Tribunal allowed 5 claims and directed the Program to pay \$1000 in full settlement. The Tribunal relied heavily upon the Agreement of Purchase and Sale between the parties to determine compensability of the owner's claims. However, certain claims were allowed, although not related to items identified in the Agreement, as reasonable under the circumstances, (1992) 24 CRAT 421.

BLACKLEY, MRS. AND MRS. IAN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the owner "either does not or does not wish to understand the purpose of the Act". The owners first-year warranty claims were either unsupported by the evidence or unreasonable, in the view of the Tribunal. (1992) 24 CRAT 427.

BREMA CONSTRUCTION CO. LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal noted that after the presentation of the evidence, the parties were able to settle. Thus, the Registrar was directed to refrain from carrying out his Proposal to refuse the builder registration, upon condition that the builder pay the Program the agreed sum of \$1500, for work performed by the Program, (1992) 24 CRAT 433.

BURKE, JOSEPH D. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Apart from claims allowed by the builder at the hearing, the Applicant's remaining first-year warranty claims were excluded under section 13(2), for example, 13(2)(b): "secondary damage" and (g): "alterations, deletions or additions made by the owner", (1992) 24 CRAT 437.

CAISSIE, MR. AND MRS. JOHN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The owner claimed financial loss resulting from excess expenditures to finish the home. The Tribunal agreed with the Program that even after giving the owner full credit for uncertain expenditures, the owner failed to prove financial loss under section 14(1)(a) of the Act. (1992) 24 CRAT 444.

CARVALHO, JULIO AND FATIMA TAVARES - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO ALLOW CLAIM FOR DEPOSIT REFUND - The Tribunal held that if the transaction in its essence was for the provision of a home, then it comes within the Act. Thus, the Applicants were refunded their deposit on the basis that the transaction as a whole between the Applicants and the builder constituted a contract for the provision of a home. The transactions included the builder's advertisement and a reservation agreement for a condominium to be built, (1992) 24 CRAT 451.

LAROCK, BLAINE - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal ordered that the hearing of this matter be adjourned pending the decision in the Julio Carvalho case, above, which dealt with the same legal issue, (1992) 23 CRAT 354.

CARVALHO v. ONTARIO NEW HOME WARRANTY PROGRAM, Decision by Divisional Court, July 26, 1993 - Appeal allowed from a decision of the Tribunal dated September 11, 1992, with the Tribunal's decision set aside - The Divisional Court stated: "The Tribunal erred in thinking it was sufficient that there merely be some kind of transaction for the provision of a home. The statute requires a very particular type of transaction: a contract to provide or agreement to sell, not simply a reservation agreement or some other form of contingent option or other transaction. If protection is to be extended to a class of transaction not specified in the legislation that is a matter for the Legislative Assembly, not the court".

MANDELL v. ONTARIO NEW HOME WARRANTY PROGRAM, Decision by Divisional Court - Appeal disallowed from a decision by the Tribunal dated September 21, 1990, costs to the Program - Upon the evidence, it was open to the Tribunal to conclude that the contractor did not undertake the performance of all the work and supply of all the materials necessary to construct a completed home. Indicia of essential nature of the agreement reviewed, (1992) 23 CRAT 328.

CASTLEGUARD HOMES (BURLINGTON) INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO REFRAIN FROM CARRYING OUT PROPOSAL TO REVOKE REGISTRATION - The Program sought to revoke registration based upon the past conduct of one of the principals of the company. This principal had not provided a personal guarantee to the Program, in the view of the Tribunal. There was also no evidence providing reasonable grounds for the belief that the company would not carry on business in accordance with law and with integrity and honesty, (1992) 24 CRAT 461.

CAUFIELD, GORDON - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The owner provided designs to the builder and then claimed that the builder provided less usable square footage than what the owner expected, based upon his own designs. The Tribunal found the claim failed under the substitution warranty in section 20 of Regulation 726, under the exclusion under section 13(2)(a), and finally upon the wording of the contract, (1992) 24 CRAT 468.

CERNOBORI, EMMA - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found no expert evidence to support owner's claim that certain windows were defective in material and workmanship. The remaining windows should be caulked as recommended by the builder and the Program, provided that the owner was prepared to permit this repair, (1992) 24 CRAT 477.

CHAMPION, ERIC AND DANIELLE - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - The Tribunal agreed with the Program that a judgment in favour of the builder must be offset against the Applicants' claim, which was further reduced by an amount considered to be time-barred under the Act. However, the Tribunal allowed the Applicants' claim for overhead and supervision of repairs because such amounts had been regarded as properly claimed in the earlier court judgment, (1992) 24 CRAT 481.

CHANTAL DEV.(ONTARIO) LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION IF PROGRAM NOT REIMBURSED - The Tribunal regarded the notices given by the Program to be sufficient for the builder to perform repairs according to its obligations both to the owners and the Program. The Program cannot afford to continue long and protracted negotiations and conciliations with each owner and builder covered under the Act. The Tribunal found that the builder owed the Program certain amounts; if such amounts remained unpaid after 15 days of the decision, the Program was directed to revoke the builder's registration, (1992) 24 CRAT 486.

CHANTAL DEVELOPMENT INC. v. COMMERCIAL REGISTRATION APPEAL TRIBUNAL AND ONTARIO NEW HOME WARRANTY PROGRAM - Decision by Divisional Court, December 10, 1992 - Application dismissed, costs awarded to the Program - The Divisional Court held that the Tribunal was entitled to refuse the adjournment requested by Chantal and to proceed with the hearing. The refusal of Chantal through counsel to remain at the hearing did not deprive the Tribunal of its jurisdiction. Under section 15 of the Statutory Powers Procedure Act, the Tribunal was entitled to act upon the uncontested evidence submitted in support of the appeal, (1992) 23 CRAT 319.

CIOFANI, ROMOLO AND LUCIANA - ONTARIO NEW HOME WARRANTIES PLAN ACT APPEAL DISALLOWED - The Applicants failed to appear at the hearing although properly served. Upon motion of counsel for the Program, the Tribunal directed the Program to disallow the claim of the Applicants, (1992) 24 CRAT 490.

CLEVELAND, MR. AND MRS. RONALD - ONTARIO NEW HOME WARRANTIES PLAN ACT - AMENDED: PRIOR ORDER UPHOLDING ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION - No one appearing for the Applicants, upon submissions by counsel for the Program, the Tribunal amended its earlier order to incorporate a subsequent re-inspection report. Certain warranty work set out in that report was ordered to be carried out, (1992) 24 CRAT 491.

COFFIN, SANDRA - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that there was insufficient evidence to support the Applicants' claim of a breach of warranty respecting the doors and windows. However, the Program was directed to re-inspect the home to ensure that the doors and windows were properly sealed. Otherwise, the cause of the excessive interior condensation was found to be due to the Applicants' failure to maintain adequate ventilation, thus excluding compensation under section 13(2)(e) of the Act, (1992) 24 CRAT 493.

COOPER, MR. AND MRS. D.J. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD IN PART: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - At the hearing, counsel for the Applicants conceded that only 1 of the Applicants' 4 claims was timely and thus compensable under the Act. Counsel for the Program conceded that this claim respecting grading was warrantable because the current grading did not comply with the Ontario Building Code as required under section 13(1)(a)(iii). The Program was thus directed to repair the grading, but otherwise to disallow the Applicants' claim, (1992) 24 CRAT 499.

CORRIGALL, MERRI - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - The Applicant provided a sound foundation for her manufactured home, which accounted for about 10% of the cost of the home. The Tribunal disagreed with the Program that the Applicant was disentitled to compensation because she had provided the home's foundation and pointed out that none of the first-year defects related to the foundation. The Tribunal further found that the Program was estopped from denying warrantability when it had earlier found the defects to be warrantable. The Tribunal ordered the Program to reinstate the warranty, conduct a conciliation inspection of all first-year defects and pay the costs of repair of all such defects where their value was greater than the amount of \$8,280.90 already received by the Applicants from the builder in an earlier court judgment, (1992) 24 CRAT 502.

COWIE, EDGAR - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that only 2 of 9 defects, which were reported about 3 years after possession, related to defects originally reported during the first year and subsequently repaired by the builder. However, the Tribunal disallowed the claim on the basis that these 2 defects were not warrantable and, furthermore, that the Applicant had failed to report faulty repair of these defects within a year after the repair was completed, (1992) 24 CRAT 509.

CURLE, KEN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that the Applicant's claim for substitution of brick work with respect to the front elevation siding should be denied, (1992) 24 CRAT 512.

DALTON, ALFRED - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that the Applicant's claim respecting hairline cracks in the basement wall of his house should be denied, (1992) 24 CRAT 513.

DI STEFANO, MARIA - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicant, upon motion by the Ontario New Home Warranty Program, the appeal was disallowed, (1992) 24 CRAT 514.

DREGER, ALF AND MARJORIE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that the Applicants did not suffer any financial loss as required under the Act because he received a house valued at the contract price. The Applicants, in continuing to make installment payments prematurely, could not rely on the Program to cover other expenditures made, (1992) 24 CRAT 515.

DREWRY, MR. AND MRS. J. - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - The Tribunal found that of the 8 defects disallowed by the Program, 2 defects relating to a heating system complaint were not properly excluded under section 13(2)(g). These defects were thus warrantable. The Tribunal disagreed that the Applicants disentitled themselves to compensation by endeavouring to correct the heating system through balancing the system and cleaning the duct work during the year between the complaint and the conciliation report, (1992) 24 CRAT 521.

D'SOUZA, ANN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that the Applicant's claims for water damage were not reported within the first year and thus not compensable. There was insufficient evidence that the water damage was related to a first-year warrantable defect respecting water penetration at another site. (1992) 24 CRAT 528.

EARLE, ROY AND KATHERINE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that the owners' complaint about the house being "out of square" was not made during the first-year warranty period. Relevant evidence was the absence of this complaint in a first-year conciliation report. Furthermore, the defect was not a "major structural defect" as defined under the Act, (1992) 24 CRAT 532.

ENY, ARIE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the owner did not discharge the onus upon him to prove that defects disallowed by the Program should be subject to the first-year warranty. The owner provided no expert evidence. The Tribunal found that the Program had carefully inspected the home. The Tribunal further found that the owner's complaint respecting squeaky floors was excluded under section 13(2)(d) of the Act. (1992) 24 CRAT 543.

FALOON CUSTOM HOMES LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION IF PROGRAM NOT REIMBURSED - The Tribunal found that the principal of the Applicant builder, David Faloon, had signed a valid guarantee to indemnify the Program for any losses incurred by a prior builder corporation, of which Mr. Faloon had once been a principal. Registration was to be revoked unless Mr. Faloon paid the entire indebtedness of the prior builder corporation, now bankrupt, to the Program, (1992) 24 CRAT 549.

FERNLUND, MR. AND MRS. MICHAEL - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that a reverse plan by the builder did not constitute an illegal substitution under section 20(1) of the Regulation. However, the Tribunal found that building a mirror image of what was undertaken constitutes improper workmanship and is warrantable under section 14(1)(b). Nevertheless, the owners failed to prove financial loss resulting from the reverse plan and their claim for \$10,000 damages for loss of enjoyment was not compensable under the Act, (1992) 24 CRAT 555.

FRANTRAY CONSTRUCTION INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicant, upon motion by the Registrar seeking to carry out a Proposal to refuse registration, the appeal was disallowed, (1992) 24 CRAT 561.

GENNINGS, GAY - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed that the Applicant had received a "benefit" through non-payment of interim occupancy fees, which was properly set off under section 14(2) of the Act to disallow the Applicant's deposit claim. The fact that the Applicant chose not to reside in the condominium did not determine whether a "benefit" had been received, (1992) 24 CRAT 562.

GLENELLEN HOMES LIMITED - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION OF APPLICANT WHO WAS ORDERED TO INDEMNIFY PROGRAM - Upon refusing the Applicant's request for adjournment and the consequent withdrawal of the Applicant, the Program presented evidence, accepted by the Tribunal, that buyers' deposits had been wrongfully retained and that the principal of the Applicant builder had been convicted of acting as a vendor/builder without registration. As a result of the Applicant's default, the Program paid out \$1,115,571.08. The Tribunal ordered the Applicant to repay this amount to the Program and further directed the Registrar to revoke the Applicant's registration. (1992) 24 CRAT 566.

SEE DeSOTO DEVELOPMENTS LIMITED v. ONTARIO NEW HOME WARRANTY PROGRAM, Decision by Divisional Court, April 29, 1992 - Appeal allowed from a decision of the Tribunal dated February 11, 1991, costs to appellant - The Court held that the Tribunal does not have the power under section 9(4) and (5) of the Ontario New Home Warranties Plan Act to require the Appellant to pay monies allegedly owing to the Program. This liability must be determined in a civil court. That portion of the Tribunal's order whereby the Appellant was required to pay \$221,139.80 to Program was struck out, (1992) 23 CRAT 322.

HO, ANDY - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicant, upon motion by the Program, the Applicant's claims for compensation were disallowed, (1992) 24 CRAT 569.

HUMPHREYS, MARIE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - In the absence of expert evidence on behalf of the Applicant, the Tribunal relied upon the uncontradicted evidence of an expert on behalf of the Program that the owner's complaint respecting basement cracks did not qualify as "major structural defects" under the Act, (1992) 24 CRAT 570.

IOZZO, MR. AND MRS M., - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found no evidence of defective material or workmanship in response to the owner's claim that he expected the upgraded kitchen cabinets to be solid oak. The provision of kitchen cabinets with oak doors and arborite trim and gables was more a contractual misunderstanding between the builder and the Applicant, (1992) 24 CRAT 574.

IRVIN, R.B. - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - Upon the Applicant acknowledging that he first reported a bulge in the vinyl cladding nearly five years after possession and that this defect did not constitute a "major structural defect", the Tribunal disallowed the Applicant's claim for compensation, (1992) 24 CRAT 579.

KENNEDY, OLIVE - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR - In response to 53 defects alleged by the owner, the Tribunal directed the Program to correct 12 specified first-year warrantable defects and to disallow the remaining claims. For example, the Applicant was not entitled to claim rectification in accordance with building plans that the Tribunal found she did not view until nearly a year after purchasing a completed house, (1992) 24 CRAT 580.

LACIKA, MR. AND MRS. E. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Applicant relied solely upon his own opinion respecting the cause of the alleged defects, being squeaky flooring and a knocking noise in the soffit area. The Applicant demanded reinspection to confirm the cause of the defects and provided no evidence by report, witness or his own observation that warrantable defects existed. The Program relied upon 4 conciliation reports by 3 experienced conciliators. In the absence of any other evidence, the Tribunal concluded that the Applicants' claims had not been proven, (1992) 24 CRAT 586.

LAWRENCE, DONALD AND LUBA KUSHARIA - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicants, upon motion by the Ontario New Home Warranty Program, the Applicants' claims for compensation were disallowed, (1992) 24 CRAT 596.

LEECH, DR. JUDITH A. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD IN PART: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Of the 7 first-year warranty claims put forward by the owner, who estimated the repair cost to be in excess of \$20,000, the Tribunal agreed with the Program that 5 claims should be disallowed upon various grounds; for example, the owner's claim for seam separation in the hardwood floor was properly excluded under section 13(2)(d); despite complaining of condensation inside the house, the owner failed to prove a defect in the manufacture or installation in the windows, which met the required standards; despite a tread depth difference, the staircase complied with the Ontario Building Code and did not constitute a major structural defect. However, the Program was directed to install a light in the basement stair landing or pay \$200, and to reconsider the complaint respecting a defective garage door opener, (1992) 24 CRAT 597.

LENHART, LIESELOTTE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - At the conclusion of the Applicant's case, counsel for the Program made a motion to dismiss the Applicant's appeal on the grounds that the Applicant had failed to prove her case. The Tribunal granted the motion, finding that the Applicant failed to prove that it was a vendor to whom she paid \$20,000, for which she claimed a deposit refund, (1992) 24 CRAT 608.

LEOMAR CONSTRUCTION LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - The Tribunal held, upon the basis of an Agreed Statement of Facts, that the Registrar had sufficient grounds, under section 7(1)(c)(i) of the Act, to believe that the Applicant builder, who showed a net income loss of \$121,647 for 1990, "cannot reasonably be expected to be financially responsible in the conduct of its undertakings", (1992) 24 CRAT 614.

LIPIEC, LAWRENCE ET AL. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The claim involved 5 applicants who separately owned houses in 1 building, with a common roof. The Tribunal agreed that the leaking roof defect did not constitute a major structural defect under the Act. Furthermore, the Tribunal found that 1 additional homeowner, whose claim for water damage was accepted, had given notice of the defect within the first-year; this notice was insufficient to notify the Program of the claims by the other 5 owners, (1992) 24 CRAT 619.

LUCYK, SOPHIE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Of the owner's 7 first-year warranty claims, the Tribunal held that only 2 claims should be re-investigated by the Program. One claim concerning the windows, which was disallowed, was to be included in the condominium corporation's claim to the Program respecting the common elements, (1992) 24 CRAT 641.

McGIVERN, EILEEN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal held that the Applicant was not entitled to a refund of monies paid under a reservation agreement for a condominium, which was not an agreement to sell, within the meaning of the Act. The Tribunal stated: "The protection afforded by the Act to consumers, including recourse to the guarantee fund under section 14 of the Act, is clearly intended to apply to dealings between consumers and persons who are required to be registered with the Program, namely vendors and builders as those terms are defined under the Act", (1992) 24 CRAT 646.

MCGUIRE, BRYAN R. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed that the Applicant's claim respecting a leaky basement did not constitute a major structural defect. The leakage affected only part of the basement only part of the time, that is, during a heavy rainfall. Thus, the Tribunal did not extend the principle in the Ferguson case (1987) 16 CRAT 149, which states that an Applicant may succeed on a major structural defect claim where only part of the house is unusable, (1992) 24 CRAT 655.

MANDOS, JACK AND LIBBY - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that there existed a "vendor" for the purposes of the Act despite no signed contract between the parties. However, a mutual release signed earlier by the parties cancelled any cause of action which the Applicants may have had against the builder for failure to perform the contract, (1992) 24 CRAT 661.

MANDOS v. ONTARIO NEW HOME WARRANTY PROGRAM - Decision by Divisional Court, September 16, 1993 - Appeal allowed from a decision by the Tribunal dated November 10, 1992. The Court remitted the matter back to the Tribunal for the hearing of further evidence and final disposition, finding that the Tribunal erred in law in dismissing the owners' claim by way of a non-suit. Having regard for sec. 13(6), the Court held that the release executed by the owners did not deprive them of a cause of action against the builder/vendor for damages for breach of warranty under sec. 14(1)(b) of the Act.

MARQUIS, PATRICIA - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD IN PART: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Of the owner's 11 first-year warranty claims, the Tribunal allowed 4 claims: one claim was for the repair of carpet seams; the balance of the claims resulted in compensation payable of \$230.00., (1992) 24 CRAT 667.

MARSH GENERAL CONTRACTORS INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - TERMS AND CONDITIONS IMPOSED, IN DEFAULT OF WHICH, REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION - The Tribunal ordered the Registrar to register the Applicant builder subject to the Applicant providing financial statements by a specified date, posting a letter of credit to the Program and restricting his building to only 2 houses at one time. If the Applicant failed to meet the financial obligations only, the Registrar was directed to carry out a Proposal to refuse registration. (1992) 24 CRAT 677.

A. SCARPAZZA MASON CONTRACTOR LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION IF PROGRAM NOT REIMBURSED - The Tribunal found that the Applicant builder breached its warranty to the owner, through the installation of a subfloor that did not comply with the Ontario Building Code, and its warranty to the Program by failing to reimburse the Program for the claim. Registration was to be refused unless the Applicant reimbursed the Program in full by a specified date, (1992) 24 CRAT 683.

MEHTA, MR. AND MRS. K. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal agreed with the Program that no defect could be found in the workmanship or materials respecting the installation of a patio door, (1992) 24 CRAT 685.

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 813 - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the actions of the Applicant, in unilaterally repairing the defective garage floor before the conciliation inspection took place, prevented the Program from carrying out its duties under the Act. There was no urgency in the repair and no proof that a different repair method, which was accepted by the Program, would have been unsatisfactory. Because of the Applicant's actions, the Program cannot order "such remedial work, if any, as may be required to settle the dispute", (1992) 24 CRAT 688.

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 813 v. 675550 ONTARIO LTD. AND ONTARIO NEW HOME WARRANTY PROGRAM - Decision by Divisional Court, February 11, 1994 - Appeal dismissed from a decision by the Tribunal dated January 8, 1993. The Court stated: "Provided the Program makes every reasonable effort to decide claims on their merits and provided it is practicable for an owner to pursue the statutory procedures without effecting repairs, we find no legal error in the ... determination of the Tribunal. We are satisfied that there was no urgency on these facts nor any other basis on which to characterize the owner's actions as reasonable in the circumstances".

MICELI, GILDO AND CONCETTA - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the Applicant suffered financial loss through his failure to comply with the holdback provisions of the Construction Lien Act and not as a result of a contract breach, as required under the Act. Further, the Tribunal found that the Applicant's claim for damages for delayed closing cannot extend to a subsequent contractor, (1992) 24 CRAT 708.

MONTEITH, CHRIS W. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION The Tribunal found that the Applicant failed to establish that two bedrooms were rendered uninhabitable because of noise emanating from the west wall. Thus no compensation was payable for a major structural defect, (1992) 24 CRAT 711.

MOULDEN, ALFRED A. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD IN PART: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Of the Applicant's 7 first-year warranty claims, the Tribunal that the Applicant failed to prove all but 2 claims. Respecting the first claim to have rough areas on a door refinished, the Tribunal preferred the viva voce evidence of the Applicant to that of the Program; in response to the second claim, the builder was prepared to repair the defect to a bedroom window if allowed access, (1992) 24 CRAT 717.

MURPHY, WILLIAM AND EVELYN - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicants, upon motion by the Ontario New Home Warranty Program, the Applicants' claim for compensation was disallowed, (1992) 24 CRAT 724.

NARINE, INDRA - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicant, upon motion by the Ontario New Home Warranty Program, the Applicant's claim for compensation was disallowed, (1992) 24 CRAT 725.

NEO, JENNY - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR - The Tribunal directed the Program to replace certain carpeting that it had earlier determined to be defective and subject to the first-year warranty. The Tribunal drew an adverse influence from the failure of the Program to account for its change in position. Further, the defect was not excluded from coverage under the Act, (1992) 24 CRAT 726.

PALLOTTA, ANGELO - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD IN PART: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - Of the Applicant's 16 first-year warranty claims, estimated by the Applicant to cost about \$23,000 to repair, the Tribunal directed the Program to pay the Applicant \$2079 in full settlement of all claims. The Tribunal rejected the methods proposed by the Applicant to repair certain warrantable defects, preferring the Program's proposed repairs. The remaining claims were not warrantable, (1992) 24 CRAT 732.

PAQUETTE, GERRY - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the Applicant failed to report an alleged defect to the drainage system within the first year of possession. Further, the Applicant failed to prove damages, (1992) 24 CRAT 743.

PENDER, JEANNE - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found no breach of contract as required under section 14(1)(a) because the Applicant failed to provide evidence of any agreement between the parties for the provision of air conditioning, (1992) 24 CRAT 749.

PREVEDEL, TONY AND LAURI - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - Upon the Applicant acknowledging that he had been compensated within the limits of the Act, the Tribunal confirmed the Ontario New Home Warranty Program's decision to disallow the Applicants' claims, (1992) 24 CRAT 757.

PROESTOS, ANGELO - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S PROPOSED METHOD OF REPAIR - Relying upon the very credible testimony of a mortar expert on behalf of the Program, the Tribunal confirmed the Program's proposal to tuck point the brickwork of the Applicant's home, together with retinting bricks with mortar stains. This was a more appropriate remedy than the Applicant's request to have the brickwork replaced, (1992) 24 CRAT 758.

QURESHI, KAZIM - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY COMPENSATION - The Tribunal found that the Applicant fully paid the home's purchase price and thus was entitled to an amount of compensation to which the Program had agreed. Further, the Tribunal directed the Program to pay additional monies for improper substitutions, (1992) 24 CRAT 770.

RAMSAROOP, MARTIN AND SYLVIA JAGTOO AND MAHADEO RAMPRASAD - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO PAY DEPOSIT CLAIMS - The Tribunal, applying the contra proferentum rule to the interpretation of the building contract, found that the Applicants were entitled to return of their deposits. The builder's failure to return these deposits constituted a contract breach under section 14(1)(a) of the Act. (1992) 24 CRAT 781.

ROBSON, MR. AND MRS. STAN - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S METHOD OF REPAIR - The Tribunal directed the Program to replace the open-area flooring as it had offered to do; additionally, the Program was directed to inspect and repair or replace the flooring if necessary in the powder room and the laundry room, as requested by the Applicants. (1992) 24 CRAT 785.

ROCBRIDGE HOMES INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: REGISTRAR'S TERMS AND CONDITIONS OF REGISTRATION - The Tribunal agreed with the Registrar that registration must be subject to the Applicant builder paying all indebtedness to the Program and posting appropriate security. (1992) 24 CRAT 793.

ROSSI, SYLVIA AND GINO - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicants, upon motion by the Ontario New Home Warranty Program, the Applicants' claim for compensation was disallowed, (1992) 24 CRAT 797.

RUFFOLO, JOHN - ONTARIO NEW HOME WARRANTIES PLAN ACT - CONSENT ORDER - The Tribunal found that effect should be given to the Full and Final Release of the Ontario New Home Warranty Program, which was signed by the Applicant. The wording of the Release was clear and ambiguous. The parties consented to a further full and final settlement of the remaining claims, (1992) 24 CRAT 798.

RUSZKOWSKI, FRANK AND KRYSTYNA - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY DIRECTED TO EFFECT REPAIR - The Tribunal agreed with the Program that 3 of the Applicants' 4 claims were not made within the first year of possession and thus were time-barred. However, the Program was directed to repair the ceilings on the second floor using a method of repair specified by the Tribunal. (1992) 24 CRAT 803.

SACCUCCI, ALDO AND CATHY - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the cracks in the foundation wall and brick veneer did not constitute major structural defects as defined under the Act. The Tribunal preferred the expert evidence on behalf of the Program, concluding that the cracking was not the result of settlement. Rather, the cracking was attributable to the Applicant's installation of an interlocking walkway along the garage wall and thus, the cracking was excluded from coverage, (1992) 24 CRAT 814.

SENIOR, ROD - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the Applicant was obliged to examine within a warranty period whether the repair work has been done properly and, if not, to report complaints to the Program on a timely basis. Further, the Tribunal stated that the same warranties in the Act could be reasonably applied to repairs effected by the Program, (1992) 24 CRAT 817.

SHAW, MR. AND MRS. CAMERON - ONTARIO NEW HOME WARRANTIES PLAN ACT - APPEAL DISALLOWED - No one appearing for the Applicants, upon motion by the Ontario New Home Warranty Program, the Applicants' claim for compensation was disallowed, (1992) 24 CRAT 821.

SILVA, MARIO - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the Applicant, who refused to bear the costs of opening a wall to investigate his claim of a major structural defect, had failed to adduce sufficient evidence to support his claim. Visual inspection by the Program revealed no cracks or bows in the wall, (1992) 24 CRAT 822.

669585 ONTARIO LTD. - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: REGISTRAR'S PROPOSAL TO REFUSE REGISTRATION - No one appearing for the Applicant, although properly served, the Tribunal heard evidence from the Ontario New Home Warranty Program that established a prima facie case in support of the Registrar's proposal. Further, the Tribunal ordered the Applicant to repay a specified sum to the Program, relying upon DeSoto Developments Ltd., (1990) 20 CRAT 17 (later overturned upon appeal to Divisional Court, see below), (1992) 24 CRAT 826.

SEE DeSOTO DEVELOPMENTS LIMITED v. ONTARIO NEW HOME WARRANTY PROGRAM, where the Divisional Court held that the Tribunal does not have the power to require the Appellant to pay monies allegedly owing to the Program. This liability must be determined in a civil court, (1992) 23 CRAT 322.

SONSINI, LEWIS AND SUSAN HALE - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR - Of the Applicants' 7 first-year warranty claims, the Tribunal disallowed 3 claims and directed the Program to pay \$225 in settlement of 2 other claims. Of the remaining 2 claims respecting the kitchen floor, the Program's offer to repair was confirmed by the Tribunal. The Program's responsibility for a specific repair of the kitchen floor depended entirely upon all parties paying to the Program all monies held in trust for such repair within a specified time; otherwise the claim would be disallowed, (1992) 24 CRAT 829.

SOSIAK, MR. AND MRS. D.M. - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR - The Tribunal allowed about two-third of the Applicants' approximately 30 first-year warranty claims. The Tribunal further held that "where the Program undertakes with the owner to do certain work which it is not obliged to do by reason of this not being reported on time (which action by the Program by itself will not impose any further liability because there is no consideration for the promise) and where the Program proceeds to have a contractor go in and do the work, in the course of which this contractor either does his work defectively or causes damage to the premises of the owner, the Program will be responsible to the owner for these actions". Thus, the Program was directed to effect repairs of damage done by its contractor. (1992) 24 CRAT 852.

SPRING, C.H. - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR - The Tribunal held that the Applicant's delay did not disentitle him to relief for an otherwise valid warranted claim. The Program failed to discharge its obligation under section 4 of Regulation 726 to respond promptly to the Applicant's claim for defective repair of a water penetration problem, (1992) 24 CRAT 870.

TEPYLO, JOHN AND TERESA - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal held that the Applicants neither gained nor lost any rights resulting from the builder's registration of the home some 4 months after possession, or from the fact that no Certificate of Completion and Possession could have been provided on the date of possession. The Applicants were entitled to be covered by the warranties as of the date of possession. The Tribunal has no jurisdiction to extend the one-year period stipulated in section 13(4) of the Act. Furthermore, the Applicants' claims against the builder merged in a prior civil court judgment; these claims were no longer available against the builder and thus against the Program, (1992) 24 CRAT 876.

THE MANORS OF SHERWOOD INC. AND COPPARD FARM ESTATES INC. - ONTARIO NEW HOME WARRANTIES PLAN ACT - REGISTRAR DIRECTED TO CARRY OUT PROPOSAL TO REFUSE REGISTRATION IF PROGRAM NOT REIMBURSED - The Tribunal found that the Applicant builders were obliged to pay to the Program specified amounts. Upon payment of such amounts, the Applicants were entitled to registration, (1992) 24 CRAT 879.

MR. AND MRS. CHI CHUEN WONG - ONTARIO NEW HOME WARRANTIES PLAN ACT - UPHELD: ONTARIO NEW HOME WARRANTY PROGRAM'S DECISION TO DENY COMPENSATION - The Tribunal found that the builder had not made an improper substitution in providing a plywood exterior to a cantilevered section at the rear of the home, instead of a brick exterior, (1992) 24 CRAT 884.

ZANDER, HANS - ONTARIO NEW HOME WARRANTIES PLAN ACT - ONTARIO NEW HOME WARRANTY PROGRAM DIRECTED TO EFFECT REPAIR AND TO PAY COMPENSATION - The Tribunal found that the builder's failure to correct the placement of the garage/foyer door when the defect became apparent well before closing was a breach of the warranty respecting workmanship. The Program was directed to perform specific repairs and to compensate the Applicant for the loss of access to which he was entitled under the Agreement of Purchase and Sale, (1992) 24 CRAT 887.

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